

SENATE BILL NO. 161

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION AND SALE OF
AQUACULTURE; PROVIDING DEFINITIONS; PROVIDING EXEMPTIONS; PROVIDING RULEMAKING
AUTHORITY; ~~AND~~ AMENDING SECTIONS 30-12-301, 50-49-203, 50-50-102, AND 80-3-302, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-12-301, MCA, is amended to read:

"30-12-301. Method of sale of commodities -- general. (1) Commodities in liquid form may be sold
only by liquid measure or by weight, and, except as otherwise provided in parts 1 through 5, commodities not in
liquid form may be sold only by weight, by measure of length or area, or by count. Liquid commodities may be
sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate
information as to the quantity of commodity sold. This section does not apply to:

- (a) commodities when sold for immediate consumption on the premises where sold;
- (b) vegetables when sold by the head or bunch;
- (c) commodities in containers standardized by a law of this state or by federal law;
- (d) commodities in package form when there exists a general consumer usage to express the
quantity in some other manner;
- (e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel,
crushed stone, and the like, when sold by cubic measure;
- (f) unprocessed vegetable and animal fertilizer when sold by cubic measure;
- (g) cottage food products as defined in 50-50-102; ~~or~~
- (h) homemade food or homemade food products sold pursuant to Title 50, chapter 49, part 2; or
- (i) aquaculture products as defined in 80-3-302.

(2) The department may adopt reasonable rules necessary to ensure that amounts of commodity

1 sold are determined in accordance with good commercial practice and are determined and represented as to
2 be accurate and informative to all parties at interest."

3
4 **Section 2.** Section 50-49-203, MCA, is amended to read:

5 **"50-49-203. Exemptions from regulations -- transactions -- information required -- exceptions.**

6 (1) (a) A state agency or an agency of a political subdivision of the state may not require licensure, permitting,
7 certification, packaging, labeling, testing, sampling, or inspection that pertains to the preparation, serving, use,
8 consumption, delivery, or storage of homemade food or a homemade food product under this part.

9 (b) This part does not preclude an agency from providing assistance, consultation, or inspection
10 requested by a producer.

11 (c) A producer is not:

12 (i) a retail food establishment, a cottage food operation, or a temporary food establishment, as
13 each term is defined in 50-50-102;

14 (ii) a wholesale food manufacturing establishment, as defined in 50-57-102; or

15 (iii) a dairy or a manufactured dairy products plant, as defined in 81-22-101.

16 (d) A producer is not subject to labeling, licensure, inspection, sanitation, or other requirements or
17 standards of 30-12-301; Title 50, chapters 31 and 50; or Title 81, chapters 2, 9, 21, 22, or 23.

18 (2) Transactions pursuant to this part:

19 (a) must be directly between the producer and the informed end consumer;

20 (b) must be only for home consumption or consumption at a traditional community social event;

21 (c) must occur only in this state and may not involve interstate commerce; and

22 (d) are not subject to regulation by a board of county commissioners pursuant to 7-21-3301.

23 (3) Except as provided in subsection (7), a producer shall inform an end consumer that any
24 homemade food or homemade food product sold through ranch, farm, or home-based sales pursuant to this
25 part has not been licensed, permitted, certified, packaged, labeled, or inspected per any official regulations.

26 (4) Except for raw, unprocessed fruit, ~~and vegetables, and aquaculture products as defined in 80-~~
27 3-302, homemade food may not be sold or used in a retail food establishment, as defined in 50-50-102, unless
28 the food has been licensed, permitted, certified, packaged, labeled, and inspected as required by law.

(5) Except as provided in subsection (6) and pursuant to this part, a producer may donate homemade food or homemade food products to a traditional community social event.

(6) A producer may not donate milk to a traditional community social event.

(7) (a) Except for a temporary food establishment subject to 50-50-120, meat or meat products processed at a state-licensed establishment or a federally approved meat establishment, by the producer, or by any third party may not be used in preparation of homemade food that is sold pursuant to a transaction provided for in this part.

(b) Subsection (7)(a) does not apply to a producer who slaughters fewer than 1,000 poultry birds a year except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175. The poultry or poultry products may not be adulterated or misbranded.

(8) A small dairy shall:

(a) sample, test, or retest every 6 months for standard plate count, coliform count, and somatic cell count of milk or cream sold as homemade food pursuant to this part;

(b) sample, test, or retest every year for brucellosis for every lactating cow, lactating goat, or lactating sheep that is part of the small dairy; and

(c) maintain records for 2 years of all previous samples, tests, or retests, which must be provided to the department of livestock if the department suspects the small dairy is causing a foodborne illness."

Section 3. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Consumer" means a person who is a member of the public, takes possession of food, and does not offer the food for resale.

(2) "Contract cook" means a person who specializes in a home food service and prepares food in an individual's domestic residence only for members of that household and house guests.

(3) "Cottage food operation" means a person who provides, manufactures, or packages cottage food products only in a kitchen in a registered area of a domestic residence and only for direct sale to a consumer in this state.

(4) "Cottage food products" means foods that are not potentially hazardous and are processed or packaged in a cottage food operation, including jams, jellies, dried fruit, dry mixes, and baked goods. Other similar foods that are not potentially hazardous may be defined by the department by rule.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between the manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage food product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.

(7) "Domestic residence" means a single-family house or a unit in a multiunit residential structure, whether rented, leased, or owned by the person in charge of the cottage food operation.

(8) "Farmer's market" means a farm premises, a food stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority under 7-21-3301.

(9) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(10) "Local board of health" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer's authorized representative.

(12) "Meat market" means an operation and buildings or structures in connection with the meat market that are used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

(13) (a) "Mobile food establishment" means a retail food establishment that serves or sells food from a motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or continuously changes location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance.

(b) The term does not include:

(i) a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the state or the federal government;

(ii) a cottage food operation transport vehicle; or

(iii) a concession stand designed to operate as a temporary food establishment.

(14) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(15) "Person" means an individual, a partnership, a corporation, an association, a cooperative group, the state or a political subdivision of the state, or other entity.

(16) "Potentially hazardous food" means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.

(17) (a) "Raw agricultural commodity" means any food in its raw, unaltered state, including fruits, vegetables, aquaculture products as defined in 80-3-302, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity in a container does not alter the raw state.

(b) The term does not include an agricultural commodity that has been altered by being:

(i) cooked;

(ii) canned;

(iii) preserved, except for drying;

(iv) combined with other food products; or

(v) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(18) "Registered area" means the portion of a domestic residence that has been registered as provided in 50-50-117 and in which food ingredients intended for cottage food products are transported or stored or the domestic residence kitchen where cottage food products are processed, packaged, or stored.

(19) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(20) "Retail" means the provision of food directly to the consumer.

(21) (a) "Retail food establishment" means an operation, whether mobile or at a temporary or stationary facility or location, that meets one or more of the conditions in subsections (21)(a)(i) and (21)(a)(ii) and that may include a central processing facility that supplies a transportation vehicle or a vending location or satellite feeding location. A retail food establishment:

(i) stores, processes, packages, serves, or vends food directly to the consumer or otherwise provides food for human consumption at a venue that may include:

(A) a restaurant;

- 1 (B) a market;
- 2 (C) a satellite or catered feeding location;
- 3 (D) a catering operation if the catering operation provides food directly to a consumer or to a
- 4 conveyance used to transport people;
- 5 (E) a vending location;
- 6 (F) a conveyance used to transport people;
- 7 (G) an institution; or
- 8 (H) a food bank; and
- 9 (ii) relinquishes possession of food to a consumer directly or indirectly by using either a delivery
- 10 service, as is done for grocery or restaurant orders, or a common carrier that provides deliveries.
- 11 (b) The term is not dependent on whether consumption is on or off the premises or whether there
- 12 is a charge for food served to the public.
- 13 (c) The term does not include:
- 14 (i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;
- 15 (ii) slaughterhouses, meat packing plants, or meat depots;
- 16 (iii) growers or harvesters of raw agricultural commodities;
- 17 (iv) a cottage food operation;
- 18 (v) a person that sells or serves only commercially prepackaged foods that are not potentially
- 19 hazardous;
- 20 (vi) a food stand that offers raw agricultural commodities;
- 21 (vii) a wholesale food establishment, including those wholesale food establishments that are
- 22 located on the same premises as a retail food establishment;
- 23 (viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a
- 24 nonprofit organization as provided in subsection (21)(c)(xiii);
- 25 (ix) custom meat and game animal processors that receive from an owner the remains of a carcass
- 26 and process those remains for delivery to the owner for the exclusive use in the owner's household by the
- 27 owner or members of the owner's household, including the owner's family pets, or of the owner's nonpaying
- 28 guests or employees. For this exemption to apply, the carcass must be kept separate from other meat food

products and parts that are to be prepared for sale.

(x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the public over no more than 4 days in a 12-month period;

(xi) a private organization that serves food only to its members and their guests;

(xii) a bed and breakfast, a hotel, a motel, a roominghouse, a guest ranch, an outfitting and guide facility, a boardinghouse, or a tourist home as defined in 50-51-102 that serves food only to registered guests and day visitors;

(xiii) a nonprofit organization that operates a temporary food establishment under a permit as provided in 50-50-120;

(xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot tea, homemade food or a homemade food product pursuant to Title 50, chapter 49, or other food not meeting the definition of potentially hazardous, as authorized by the appropriate municipal or county authority;

(xv) a day-care center under 52-2-721(1)(a) or day-care providers who are not subject to licensure under 52-2-721(1)(a);

(xvi) a private domestic residence that receives catered or home-delivered food;

(xvii) a contract cook; or

(xviii) a provider of free samples to the public as a marketing activity if the provider is a licensed wholesale food establishment, a cottage food operation, or a seller at a farmer's market.

(22) "Temporary food establishment" means a retail food establishment that in a licensing year either:

(a) operates at a fixed location for no more than 21 days in conjunction with a single event or celebration; or

(b) uses a fixed menu and operates within a single county at a recurring event or celebration for no more than 45 days.

(23) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human

consumption that is used for individual family households and family farms and ranches."

Section 4. Section 80-3-302, MCA, is amended to read:

"80-3-302. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Aquaculture" means the COMMERCIAL production of aquatic organisms under controlled conditions throughout part or all of their life cycle.

(2) "Aquaculture products" means articles used for human consumption produced by aquaculture. The term includes but is not limited to fish, shellfish, and aquatic plants.

(4)(3) "Container" means any package, sack, box, crate, carton, basket, or other object used for the shipping of produce.

(4) (a) "Controlled conditions" means the management of water quality, feed, stocking density, and environmental parameters within an aquatic system to optimize the growth and health of farmed aquatic organisms. CONTROLLED CONDITIONS INCLUDE THE CONDITIONS REQUIRED BY A CONTROLLED SPECIES PERMIT OR A PROHIBITED SPECIES PERMIT ISSUED PURSUANT TO TITLE 87, CHAPTER 5, PART 7.

(b) The term does not include a pond, lake, reservoir, river, OCEAN, or stream.

(2)(5) "Director" means the director of agriculture appointed pursuant to 2-15-3001.

(3)(6) "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

(4)(7) (a) "Produce" means any fruit, vegetable, aquaculture product, or other natural product designated by department rule.

(b) The term does not include livestock and its byproducts, poultry and its byproducts, apiary products, dairy products, or grain.

(5)(8) "Produce dealer" means a person who engages in a business involving or who as part of a business participates in purchasing, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of produce in this state, except vegetative seed potato products intended or used for planting purposes.

(6)(9) "Produce unit" means the standard size container for a given type of produce. A produce unit may be established by department rule.

2 ~~(8)(11)~~ "Shipping point inspection" means an inspection of produce at the location from which it was
3 shipped.

6 ~~(10)(13)~~(a) "Wholesale" means the sale of produce intended for resale.

7 (b) The term does not include the sale of Montana-grown produce when sold by the Montana
8 grower for purposes of resale or vegetative seed potato products intended or used for planting purposes."

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